IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

TUESDAY, THE 11TH SEPTEMBER 2007 / 20TH BHADRA 1929

Crl.Rev.Pet.No. 3215 of 2007()

CC.171/05 OF JFCM, RAMANKARY
CRA.521/06 OF ADDL.SESSIONS COURT, FAST TRACK-II, ALAPPUZHA

REVN. PETITIONER: APPELLANTS/ACCUSED NOS.1 TO 3

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1. HARILAL @ MANIKUTTAN,
   S/O.CHELLAPPAN, AGED 43 YEARS, AASSARIPARAMBIL
   VEEDU, PULLANGADIKARA, CHAMPAKKULAM PANCHAYATH
   WARD NO.7, ALAPPUZHA.

2. SATHEESH KUMAR, S/O.NANUKUTTAN,
   AGED 29 YEARS, THEKKEPURACKAL VEEDU,
   AASSARIPARAMBIL VEEDU, PULLANGADIKARA,
   CHAMPAKKULAM PANCHAYATH WARD NO.7, ALAPPUZHA.

3. SUBHASH KUMAR, S/O.BALAKRISHNAN ASSARI,
   AGED 30 YEARS, THEKKEPURACKAL VEEDU,
   AASSARIPARAMBIL VEEDU, PULLANGADIKARA,
   CHAMPAKKULAM PANCHAYATH WARD NO.7, ALAPPUZHA.

BY ADV. SRI.S.SHANAVAS KHAN

RESPONDENTS: COMPLAINANT

THE STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.K.S.SIVAKUMAR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 11/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

Crl. R.P. No. 3215 OF 2007 B

Dated this the 11th day of September, 2007

O R D E R

The revision petitioners, who are accused Nos.1 to 3 in C.C.No.171/05 on the file of the JFGM, Ramankary for offences punishable under sections 341 and 323 read with section 34 IPC, challenge the conviction entered and the sentence passed against them concurrently by the courts below.

2. The case of the prosecution can be summarised as follows:-

On 10.3.2005 at about 4.45 p.m. in furtherance of their common intention to cause hurt to PW1 due to previous enmity towards him, A1 restrained PW1 by catching hold of his shirt by the collar and slapped on his left cheek 5 to 6 times and A2 beat him on the right side of his stomach and A3 also beat him on the left side of his stomach causing pain to him.

3. On the side of the prosecution 7 witnesses were examined as PWs 1 to 7 and 5 documents were got marked as Exts.P1 to P5.

4. The accused did not admit the incriminating circumstances put to them from the evidence for the prosecution and maintained their innocence. They did not adduce any defence evidence when called upon to do so.

5. The learned Magistrate after trial, as per judgment dated 13.9.06 found the revision petitioners guilty of the offences punishable under sections 341 and 323 read with section 34 IPC and sentenced each of them to simple imprisonment for one month under section 341 IPC and simple imprisonment for three months and to pay a fine of Rs.500/- under section 323 IPC. Each of the defaulting accused was directed to undergo simple imprisonment for one month by way of default sentence. On appeal preferred by the revision petitioners as Crl.Appeal No.521/06, the lower appellate court as per judgment dated 30.4.2007 confirmed the conviction recorded by the trial court but has modified the sentence to one of fine of Rs.500/- with a default sentence of simple imprisonment for 15 days under section 341 IPC and a fine of Rs.1,000/- (Rupees one thousand only) with a default sentence of simple imprisonment for one month under section 323 IPC. There is a direction to pay the fine amount as

compensation to PW1.

6. The learned counsel for the revision petitioners assailed the conviction recorded against them on various grounds including contradictions in the testimony of PW1 and others. No doubt, that there are a few contradictions and omissions in the testimony of the prosecution witnesses. But they are in respect of relatively inconsequential aspects of the matter. There are bound to be contradictions, omissions and exaggerations even in the testimony of the most truthful witnesses. But so long as they are not in respect of material aspects of the matter, courts do not attach any importance to them. The trial Magistrate who had the unique advantage of seeing the witnesses and assessing their credibility has not chosen to believe the prosecution witnesses including PW1, the injured. The lower appellate court has also endorsed the conclusion reached by the trial court. In the absence of any infirmity in the appreciation of evidence by the courts below, this court, sitting in the rarefied revisional jurisdiction, will be loathe to interfere with the said conviction which is accordingly confirmed.

7. What now survives for consideration is the question of adequacy of sentence. The lower appellate court has been indulgent enough to let the revision petitioners go with a fine. If at all the learned Sessions Judge has erred it was on the side of leniency in not awarding a sentence of imprisonment. I see no ground to interfere with the sentence as well.

This revision is accordingly, dismissed.

(V. RAMKUMAR, JUDGE)

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